



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2014 REGULAR SESSION

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SENATE BILL NO. 176

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WEDNESDAY, MARCH 19, 2014

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The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED  
DATE April 9, 2014  
1:48 pm  
ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Allen

1 AN ACT relating to caregivers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔Section 1. KRS 405.023 is amended to read as follows:

4 (1) The Cabinet for Health and Family Services shall create a centralized statewide  
5 service program that provides information and referrals through a statewide toll-free  
6 telephone number to grandparents and other caregivers who are caring for minors  
7 who are not their biological children~~[minor grandchildren]~~.

8 (2) The program shall provide information on a wide variety of services, including but  
9 not limited to:

- 10 (a) Kentucky Transitional Assistance Program;
- 11 (b) Health care~~[Medical coverage]~~ and services, including the Kentucky  
12 Children's Health Insurance Program;
- 13 (c) Educational services;
- 14 (d) Child care;
- 15 (e) Child support;
- 16 (f) Support groups;
- 17 (g) Housing assistance;
- 18 (h) Legal services; and
- 19 (i) Respite care for low-income kinship caregivers.

20 (3) The cabinet may coordinate this program with the KyCARES Program.

21 (4) This program shall be known as the KinCare Support Program.

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO  
23 READ AS FOLLOWS:

24 (1) As used in this section:

25 (a) "Cabinet" means the Cabinet for Health and Family Services;

26 (b) "Caregiver" means an adult person with whom a minor resides, including a  
27 grandparent, step-grandparent, stepparent, aunt, uncle, or any other adult

1 relative of the minor;

2 (c) "De facto custodian" has the same meaning as defined in KRS 403.270;

3 (d) "Department" means the Department of Education;

4 (e) "Health care provider" means any licensed medical, surgical, dental,  
 5 psychological, or osteopathic practitioner; nurse practitioner; occupational,  
 6 physical, or speech therapist; hospital; public or private health clinic; or  
 7 their agents or employees; and

8 (f) "Health care treatment":

9 1. Means any necessary medical and dental examination, diagnostic  
 10 procedure, and treatment, including but not limited to hospitalization,  
 11 developmental screening, mental health screening and treatment,  
 12 preventive care, immunizations recommended by the federal Centers  
 13 for Disease Control and Prevention's Advisory Committee on  
 14 Immunization Practices, well-child care, blood testing, and  
 15 occupational, physical, and speech and language therapies; and

16 2. Does not mean any procedure to terminate a pregnancy, pregnancy  
 17 determination testing, HIV or AIDS testing, controlled substance  
 18 testing, or any other testing for which a separate court order or  
 19 informed consent is required under other applicable law.

20 (2) The caregiver shall create an affidavit establishing the caregiver's ability to  
 21 authorize health care treatment for a minor and to make school-related decisions  
 22 for a minor. The affidavit shall include but not be limited to the following  
 23 information:

24 (a) The name and address of the caregiver;

25 (b) The caregiver's relationship to the minor to whom the affidavit applies;

26 (c) A statement that the caregiver is over the age of eighteen (18);

27 (d) The name and date of birth of the minor to whom the affidavit applies;

- 1 (e) A statement that the minor resides in the caregiver's home;
- 2 (f) A statement that the caregiver shall be allowed to authorize the provision of  
3 health care treatment to the minor, or to withhold such authorization;
- 4 (g) A statement that the caregiver shall be the person responsible for enrolling  
5 the minor in school and acting as the minor's legal contact with the school  
6 for the purposes of making decisions on enrollment, attendance,  
7 extracurricular activities, discipline, and all other school-related activities;
- 8 (h) A statement identifying the minor's parents, de facto custodian, guardian,  
9 or legal custodian and describing the caregiver's relationship to the parents,  
10 de facto custodian, guardian, or legal custodian;
- 11 (i) A statement that no other party has legal standing in custody issues for the  
12 minor other than those parties identified in paragraph (h) of this  
13 subsection;
- 14 (j) The dated signatures of the minor's parents, de facto custodian, guardian,  
15 or legal custodian indicating their approval of the caregiver's ability to  
16 authorize the provision of health care treatment to the minor and to make  
17 school-related decisions for the minor. If a parent or parents, de facto  
18 custodian, guardian, or legal custodian are unavailable to sign the affidavit,  
19 the affidavit shall include a statement describing the circumstances of their  
20 unavailability and a statement of the caregiver's reasonable efforts to locate  
21 them;
- 22 (k) The dated signature of the caregiver;
- 23 (l) A statement that acknowledges that a person making false statements in the  
24 affidavit shall be subject to criminal penalties;
- 25 (m) A statement that acknowledges that execution of the affidavit does not  
26 confer upon the caregiver the status of a de facto custodian, guardian, or  
27 legal custodian of the minor; and

- 1       (n) A statement that acknowledges the requirement for the caregiver to notify  
2       any health care provider or school to which the affidavit was presented if  
3       the minor ceases to reside with the caregiver or the affidavit is revoked by  
4       the minor's parent or parents, de facto custodian, guardian, legal custodian,  
5       or caregiver.
- 6       (3) The health care authorization portion of the affidavit described in subsection (2)  
7       of this section shall be valid for one (1) year and may be renewed annually  
8       thereafter unless it is revoked by the minor's parent or parents, de facto  
9       custodian, guardian, legal custodian, or caregiver, or if the minor no longer  
10       resides with the caregiver. Execution or revocation of the health care  
11       authorization portion of the affidavit shall not operate as a complete execution or  
12       revocation of the entire affidavit.
- 13       (4) The education authorization portion of the affidavit described in subsection (2) of  
14       this section shall be valid for one (1) year and may be renewed annually  
15       thereafter unless it is revoked by the minor's parent or parents, de facto  
16       custodian, guardian, legal custodian, or caregiver, or if the minor no longer  
17       resides with the caregiver. Execution or revocation of the education authorization  
18       portion of the affidavit shall not operate as a complete execution or revocation of  
19       the entire affidavit.
- 20       (5) A caregiver may authorize the provision of health care treatment or may refuse  
21       the provision of health care treatment to a minor residing with the caregiver if the  
22       caregiver presents to a health care provider a duly executed affidavit as described  
23       in subsection (2) of this section.
- 24       (6) The decision of a caregiver to authorize or refuse health care treatment for a  
25       minor shall be superseded by a decision of a parent, de facto custodian, guardian,  
26       or legal custodian of the minor.
- 27       (7) A health care provider shall honor a caregiver's authorization to provide health

1 care treatment to a minor, or the caregiver's decision to withhold such  
 2 authorization, if the caregiver presents to the provider a duly executed affidavit  
 3 described in subsection (2) of this section. A health care provider shall refuse to  
 4 honor the caregiver's decision to seek or refuse health care treatment if the  
 5 provider has actual knowledge that a parent, de facto custodian, legal custodian,  
 6 or guardian has made a superseding decision to authorize or refuse health care  
 7 treatment for the minor. The provisions of this subsection shall not be construed  
 8 to prohibit a health care provider from providing health care treatment for a  
 9 condition that, left untreated, could reasonably be expected to substantially  
 10 threaten the health or life of the minor.

11 (8) A person who relies in good faith on a duly executed affidavit as described in  
 12 subsection (2) of this section in providing or refusing health care treatment shall:

13 (a) Be under no obligation to undertake further investigation into the  
 14 circumstances forming the basis of the caregiver's authorization to the  
 15 provision or refusal of health care treatment; and

16 (b) Not be subject to criminal or civil liability or professional disciplinary  
 17 action because of that reliance.

18 (9) The provisions of this section shall not be construed to relieve any health care  
 19 provider from liability for negligence in the provision of health care treatment.

20 (10) An affidavit described in subsection (2) of this section may be revoked by the  
 21 minor's parent, de facto custodian, guardian, legal custodian, or caregiver, and  
 22 shall be revoked if the minor to whom it applies ceases to reside with the  
 23 caregiver. If an affidavit is revoked, the caregiver shall give written notice of  
 24 revocation to any health care provider to which the affidavit was presented for the  
 25 purpose of obtaining health care for the minor.

26 (11) A person who knowingly makes a false statement in an affidavit described in  
 27 subsection (2) of this section shall be guilty of a Class A misdemeanor.

1        ➔ SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO  
2 READ AS FOLLOWS:

3        (1) As used in this section, "caregiver" has the same meaning as provided in  
4        subsection (1) of Section 2 of this Act.

5        (2) (a) A caregiver may be authorized to make school-related decisions for a minor  
6        residing in the caregiver's home, including but not limited to decisions  
7        concerning enrollment, attendance, extra-curricular activities, discipline,  
8        special education and related services, and other school-related activities, if  
9        the caregiver presents to the school a duly executed affidavit as described in  
10       subsection (2) of Section 2 of this Act.

11       (b) A school shall honor a caregiver's authority to make school-related  
12       decisions for a minor residing in the caregiver's home if the caregiver  
13       presents the school with a duly executed affidavit as described in subsection  
14       (2) of Section 2 of this Act. The affidavit shall be valid in the school district  
15       in which the caregiver resides, but a school official charged with the  
16       responsibility of enrolling a minor shall not honor the affidavit if the  
17       official has reasonable grounds to believe that the affidavit is presented  
18       solely for the purpose of enrolling the minor in a school for the purpose of:

19       1. Access to athletics programs, or

20       2. Circumventing the school assignment, attendance, or boundaries  
21       policies of the school district to gain access to curricula, services, or  
22       programs unique to a particular school and not offered at other  
23       schools the minor would be eligible to attend.

24       (3) A school-related decision made by a caregiver under the affidavit described in  
25       subsection (2) of Section 2 of this Act shall be superseded by a decision of a  
26       parent, de facto custodian as defined in KRS 403.270, guardian, or legal  
27       custodian of the minor. A school official shall refuse to honor a caregiver's

1 decision if he or she has actual knowledge that a parent, de facto custodian as  
 2 defined in KRS 403.270, guardian, or legal custodian has made a school-related  
 3 decision superseding the decision of a caregiver.

4 (4) A person who relies in good faith on a duly executed affidavit as described in  
 5 subsection (2) of Section 2 of this Act shall be under no obligation to undertake  
 6 further investigation into the circumstances forming the basis of the caregiver's  
 7 authority to make school-related decisions for the minor to whom the affidavit  
 8 applies.

9 (5) A person who relies in good faith on a duly executed affidavit as described in  
 10 subsection (2) of Section 2 of this Act in honoring a school-related decision of a  
 11 caregiver shall not be subject to criminal or civil liability because of that reliance.

12 (6) An affidavit described in subsection (2) of Section 2 of this Act may be revoked by  
 13 the minor's parent, de facto custodian, guardian, legal custodian, or caregiver,  
 14 and shall be revoked if the minor to whom it applies ceases to reside with the  
 15 caregiver. If an affidavit is revoked, the caregiver shall give written notice of  
 16 revocation to any school to which the affidavit was presented for the purposes of  
 17 enrolling the minor and establishing the caregiver's authority to make school-  
 18 related decisions for the minor.

19 (7) The provisions of this section shall not supersede the provisions of:

20 (a) The Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et  
 21 seq., and its accompanying regulations at 34 C.F.R. pts. 300 et seq.;

22 (b) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs.  
 23 705(20) and 794 to 794b, and its accompanying regulations at 34 C.F.R. pts.  
 24 104 et seq.; and

25 (c) The Family Educational and Privacy Rights Act, 20 U.S.C. sec. 1232g, and  
 26 its accompanying regulations at 34 C.F.R. pts. 99 et seq.

27 (8) A person who knowingly makes a false statement in an affidavit described in



1       *subsection (2) of Section 2 of this Act shall be guilty of a Class A misdemeanor as*  
2       *required under subsection (11) of Section 2 of this Act.*

Kathryn Kratz Stone  
President of Senate

Greg D. Stiles  
Speaker-House of Representatives

Attest: Donna R. Holz  
Chief Clerk of Senate

Approved Steve B. Benson  
Governor

Date 4/9/14